



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

December 20, 2007

D.P.U. 07- 105

Investigation by the Department of Public Utilities, on its own motion, commencing a rulemaking pursuant to 220 C.M.R. §§ 2.00 et seq., and for the purpose of amending 220 C.M.R. § 1.00 et seq., Procedural Rules; 220 C.M.R. § 2.00 et seq., Adoption of Regulations; 220 C.M.R. § 5.00 et seq., Tariffs, Schedules and Contracts (Other Than Commercial Motor Vehicles); 220 C.M.R. § 6.00 et seq., Standard Cost of Gas Adjustment Clause; 220 C.M.R. § 7.00 et seq., Residential and Commercial Energy Conservation Service Program Cost Recovery; 220 C.M.R. 8.00 et seq., Sales of Electricity By Qualifying Facilities and On-Site Generating Facilities To Distribution Companies, and Sales of Electricity By Distribution Companies To Qualifying Facilities and On-Site Generating Facilities; 220 C.M.R. § 9.00 et seq., Cost Recovery For Major Electric Company Generation Investments,; 220 C.M.R. § 11.00 et seq., Rules Governing Restructuring of the Electric Industry; 220 C.M.R. § 12.00 et seq., Standards of Conduct For Distribution Companies and Their Affiliates; 220 C.M.R. § 14.00 et seq., The Unbundling of Services Related To The Provision of Natural Gas; 220 C.M.R. § 25.00 et seq., Billing and Termination Procedures of the Department of Telecommunications and Energy; C.M.R. § 99.00 et seq., Procedures For the Determination and Enforcement of Violations of G.L. c. 82, § 40 ("Dig Safe"); 220 C.M.R. § 109.00 et seq., Design, Construction, Operation, and Maintenance of Intrastate Pipelines Operating In Excess of 200 PSIG; 220 C.M.R. § 126.00, Underground Electric Supply and Communications Lines 50,000 Volts and Below; 220 C.M.R. § 152.00 et seq., Sureties Required of Operators of Motor Vehicles For the Carriage of Passengers For Hire; 220 C.M.R. § 153 et seq., Certificates Running To The Registrar of Motor Vehicles; 220 C.M.R. § 155.00 et seq., Operation of Motor Vehicles For Hire Under A Certificate of Public Convenience and Necessity, Charter License, Special Service or School Service Permit; and 220 C.M.R. § 250.00 et seq., Transportation Division Practice.

ORDER INSTITUTING RULEMAKING

I. INTRODUCTION

The Department of Public Utilities (“Department”) commences this rulemaking pursuant to 220 C.M.R. §§ 2.00 et seq., for the purpose of amending numerous Department regulations.¹ The proposed revisions are largely intended to make the Department’s regulations consistent with Chapter 19 of the Acts of 2007 (“Chapter 19”). For example, references to the former Department of Telecommunications and Energy have been replaced with the words “Department of Public Utilities.” In addition to amendments necessary to carry out Chapter 19, the proposed revisions correct typographical errors, make changes

¹ 220 C.M.R. § 1.00 et seq., Procedural Rules, 220 C.M.R. § 2.00 et seq., Adoption of Regulations, 220 C.M.R. § 5.00 et seq., Tariffs, Schedules and Contracts (Other Than Commercial Motor Vehicles), 220 C.M.R. § 6.00 et seq., Standard Cost of Gas Adjustment Clause, 220 C.M.R. § 7.00 et seq., Residential and Commercial Energy Conservation Service Program Cost Recovery, 220 C.M.R. 8.00 et seq., Sales of Electricity By Qualifying Facilities and On-Site Generating Facilities To Distribution Companies, and Sales of Electricity By Distribution Companies To Qualifying Facilities and On-Site Generating Facilities, 220 C.M.R. § 9.00 et seq., Cost Recovery For Major Electric Company Generation Investments, 220 C.M.R. § 11.00 et seq., Rules Governing Restructuring of the Electric Industry, 220 C.M.R. § 12.00 et seq., Standards of Conduct For Distribution Companies and Their Affiliates, 220 C.M.R. § 14.00 et seq., The Unbundling of Services Related To The Provision of Natural Gas, 220 C.M.R. § 25.00 et seq., Billing and Termination Procedures of the Department of Telecommunications and Energy, C.M.R. § 99.00 et seq., Procedures For the Determination and Enforcement of Violations of G.L. c. 82, § 40 (“Dig Safe”), 220 C.M.R. § 109.00 et seq., Design, Construction, Operation, and Maintenance of Intrastate Pipelines Operating In Excess of 200 PSIG, 220 C.M.R. § 126.00, Underground Electric Supply and Communications Lines 50,000 Volts and Below, 220 C.M.R. § 152.00 et seq., Sureties Required of Operators of Motor Vehicles For the Carriage of Passengers For Hire, 220 C.M.R. § 153 et seq., Certificates Running To The Registrar of Motor Vehicles, 220 C.M.R. § 155.00 et seq., Operation of Motor Vehicles For Hire Under A Certificate of Public Convenience and Necessity, Charter License, Special Service or School Service Permit, and 220 C.M.R. § 250.00 et seq., Transportation Division Practice.

consistent with other statutory amendments and replace or delete outdated information. The proposed regulations also contain new sections designed to codify long-standing Department practice with regard to ex parte communications and requests for confidential treatment of filings.

First, 220 C.M.R. § 1.00 includes a new proposed section clarifying that Commissioners, presiding officers and Department staff are prohibited from engaging in ex parte communications regarding substantive matters in an adjudicatory proceeding. The proposed rule is consistent both with Department practice and with G.L. c. 30A, § 11 (4), prohibiting the Department from relying on information other than record evidence in an adjudicatory proceeding.

Second, 220 C.M.R. § 1.00 also includes a new proposed section regarding motions for confidential treatment of documents. The proposed regulations list the written information that a party must provide when seeking protective treatment of documents in an adjudicatory proceeding. This new section is consistent with Department practice as well.

This rulemaking does not propose regulations related to the Department of Telecommunications and Cable (“DTC”), newly established by Chapter 19. The Department anticipates a future rulemaking whereby the Department may rescind regulations under the DTC’s purview.

II. PROPOSED REGULATIONS

Pursuant to G.L. c. 25, § 5B; G.L. c. 25, § 5C; c.30A, §§ 1-6, 6B, 8, 9 and 11; G.L. c. 82, §§ 40-40E; G.L. c. 159, §§ 12 and 16; G.L. c. 159A, §§ 6, 7, 9 and 11A; G.L. c.

161B, § 6(i); G.L. c. 164, §§ 1, 1C, 1F, 76, 76A, 76C, 85, 85A, 94, 94A-94C, 94G, 105A and 128; G.L. c. 165, §§ 1, 1B and 4; the Department may establish regulations necessary for the administration of such statutes. A copy of the current regulations incorporating the proposed revisions is available the Department's website at www.mass.gov/dpu. The effective date of the revised regulations shall be the date of final publication in the Massachusetts Register.

III. SOLICITATION OF COMMENTS

To provide opportunity for comment, and pursuant to G.L. c. 30A, §§ 2 and 4, and 220 C.M.R. § 2.05, the Department will hold a public hearing on Wednesday, January 30, 2008 at 10:00 a.m., at the Department's offices, One South Station, Boston, Massachusetts. Interested persons may present facts, opinions, or arguments relating to the proposed revisions to the regulations at the public hearing. The Department seeks initial written comments prior to the public hearing, but no later than 5:00 p.m. on January 30, 2008. Initial written comments should be limited in length to a maximum of ten one-sided, double-spaced typewritten pages. Following the public hearing, written reply comments must be filed no later than 5:00 p.m. on February 6, 2008. Reply comments should be limited in length to a maximum of ten one-sided, double-spaced typewritten pages. All written comments should be filed with Mary L. Cottrell, Secretary, Department of Public Utilities, One South Station, 2nd Floor, Boston, Massachusetts 02110.

All documents should be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dpu.efiling@state.ma.us and

elizabeth.cellucci@state.ma.us or (2) on a 3.5" disk or CD-ROM. The text of the e-mail, disk label, or CD-ROM must specify: (1) the docket number of the proceeding (D.P.U. 07-105), (2) name of the person or company submitting the filing, and (3) a brief descriptive title of the document. The electronic filing should also include the name, title and telephone number of a person to contact in the event of questions about the filing. Text responses should be created in either Corel WordPerfect, Microsoft Word, or Adobe Acrobat (version 7 or higher). Data or spreadsheet responses should be compatible with Microsoft Excel (version 2000). The Department strongly encourages filers to avoid submitting scanned files but will accept them for posting when an alternative version does not exist in electronic format. In addition, if the petitioner, applicant, or any other participant has already filed a document relevant to this proceeding, such as the initial petition, application, or filing, without providing an electronic copy of that document, such entity is directed to do so in compliance with the above electronic filing requirements as soon as practicable. All documents submitted in electronic format will be posted on the Department's website: <http://www.mass.gov/dpu>.

By Order of the Department,

/s/
Paul Hibbard, Chairman

/s/
W. Robert Keating, Commissioner

/s/
Tim Woolf, Commissioner